IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 60 OF 2000.

State through Public Prosecutor. ... Appellant.

Versus

1. Raghuvir A. Tandel,
2. Vijay A. Tandel,
both major, r/at
Naikawado, Torsem, Pernem. ... Respondents.

Mr. A.P. Lawande, Public Prosecutor for the Appellant.

Mr. A.D. Bhobe, Advocate for the Respondents under Legal Aid Scheme.

Coram: P.V. HARDAS, J.

Date: 8th January 2002.

ORAL JUDGMENT.

The present respondents alongwith their father and wife of respondent no. 2 were prosecuted for an offence punishable under Sections 498A, 312 and 504 before the Judicial Magistrate, First Class, Mapusa, in-charge of Pernem Court. The learned Judicial Magistrate First Class, Pernem by his Judgment dated 1st November 1999 convicted the respondent no. 1 for an offence punishable under Sections 498A and 312 of the Indian Penal Code and convicted the respondent no. 2 for an offence punishable under Section 498A of the Indian Penal Code. The father of the present respondents, who was original accused no. 3, expired during the pendency of the trial. The original accused no. 4, wife of the present respondent no. 2, was acquitted of the offence with which she was charged. The respondents 1 and 2 also came to be acquitted by the learned Judicial

Magistrate, First Class, Pernem for an offence punishable under Section 504 of the Indian Penal Code. On appeal, the Additional District and Sessions Judge, Mapusa, allowed the appeal filed by the present respondents and acquitted them of the offences with which they were convicted. The State, being aggrieved by the Judgment of the Additional District and Sessions Judge, Mapusa, dated 13th April 2000, acquitting the respondents, has filed the present appeal.

2. The facts necessary for the decision of the appeal are set out hereunder:-

On 15th September 1995 a complaint came to be filed by P.W.1 Reshma Tandel complaining of harassment and ill-treatment at the hands of her husband Raghuvir Tandel (A-1), Vijay Tandel, brother-in-law, (A-2), Pratima Vijay Tandel, wife of A-2 and Atmaram Tandel, father-in-law, A-3. An offence came to be registered on the basis of the said complaint vide Crime No. 80 of 1995 under Sections 498A, 312, 504 read with Section 34 of the Indian Penal Code. The complainant P.W.1 Reshma Tandel was referred to Goa Medical College, Bambolim, where she was examined by P.W.12 Dr. Silvano Dias Sapeco. On examination P.W.12 Dr. Sapeco vide his report at Exhibit P.W.12/A opined that the medical findings were in consistent with medical intervention, to terminate products of conception, during the first three months of Reshma's pregnancy. P.W.1 Reshma was also

referred to the Institute of Psychiatry and Human Behaviour. She was examined by P.W.11 Dr. Maria Pereira, who is working as a Lecturer in the said Institute. According to Dr. Maria Pereira, vide her report at Exhibit P.W.11/A, she found that P.W.1 Reshma had slightly below average I.Q., i.e., 89 and adjustment problems. She had also placed on record the Psychological Evaluation (notes) prepared by her at Exhibit P.W.11/B. During the course of investigation, three letters came to be seized, which are Exhibits P.W.1/A, P.W.2/A and P.W.5/A. During the course of investigation, the specimen writing of respondent no. 1 /original accused no. 1 was obtained vide panchanama Exhibit P.W.14/A in the presence of the panch witness P.W.14 Satyawan Redkar. The specimen writing and the questioned documents were sent to the Government Examiner for his opinion. P.W.13 S.C. Lohia vide his opinion Exhibit P.W.13/C opined that the said three letters at Exhibits P.W.1/A, P.W.2/A and P.W.5/A were in the handwriting of the respondent no. 1. After completing the investigation P.W.15 P.S.I. Uday Parab filed a charge sheet against the present respondents and two others for offences punishable under Sections 498A, 312 and 504 read with Section 34 of the Indian Penal Code. The learned Judicial Magistrate, First Class, Pernem, vide Exhibit 3 framed a charge against all the accused for the aforesaid offences.

3. The accused abjured their guilt and claimed to be tried. The prosecution in support of its case examined 15

witnesses. The prosecution examined P.W.1 Reshma Tandel, P.W.2 Sushma Parab, P.W.3 Ganesh Parab, P.W.4 Jaganath Gorkhankar, P.W.5 Dnyander Parab and P.W.6 Satyawati Parab. The prosecution also examined the medical officers as P.W.10 Dr. Ratan Naik, P.W.11 Dr. Maria Pereira and P.W.12 Dr. Silvano Dias Sapeco. The prosecution examined P.W.7 Vishalini Naik to prove that respondent no. 1/accused no. 1 had given a letter at Exhibit P.W.2/A to Sushma Parab. P.Ws. 8 and 9 Shivram Parab and Jandharan Kaskar are witnesses who corroborated the version of P.W.1 Reshma, P.W.5 Dnyander and P.W.6 Satyawati. P.W.13 S.C. Lohia is the handwriting expert. P.W.14 Satyawan Redkar is a panch witness in whose presence specimen writing of respondent no. 1 was obtained and P.W.15 P.S.I. Uday Parab is the Investigating Officer.

4. The learned appellate Court, while allowing the appeal filed by the present respondents, held that, in view of the evidence of P.W.10 Dr. Ratan Naik, it was clear that P.W.1 Reshma and the respondent no. 1 had told her that they did not want to have a child. According to the learned appellate Court, nothing was brought out in the evidence of P.W.10 Dr. Ratan Naik to show that the termination of the pregnancy of P.W.1 Reshma was either forcible or against her wish. The learned appellate Court gave due consideration to the declaration at Exhibit P.W.10/A, which was signed by P.W.1 Reshma giving her consent for the medical termination

of her pregnancy. In the light of this, the learned appellate Court, therefore, disbelieved the version of P.W.1 Reshma. In respect of an offence punishable under Section 498A of the Indian Penal Code, the appellate Court, taking into consideration the letter at Exhibit P.W.1/A and the oral testimony of the witnesses, came to the conclusion that there was no harassment of P.W.1 Reshma in connection with any demand for dowry. The learned appellate Court, therefore, allowed the appeal and acquitted the respondents as aforesaid. The State being aggrieved by the acquittal of original accused 1 and 2 has filed the present appeal.

5. According to P.W.1 Reshma, her marriage was registered with the Sub-Registrar of Pernem on 19th April 1995 and was solemnized as per the religious rights and customs on 2nd May 1995. P.W.1 in her evidence states that after her marriage she went to reside in the house of the accused at Torsem. The accused behaved well with her for a few days after the marriage. According to her, her parents had gifted a steel cupboard, sewing machine, utensil stand, one gold ring and one gold chain. P.W.1 Reshma states that the accused started harassing her, that is, the accused persons started finding fault with everything that she did and this harassment was because the accused wanted her to bring a refrigerator, cot and fan from her parents house. According to her, on the date of the registration of the marriage, the accused no. 1 had given a letter to her

asking for a Kelvinator Refrigerator. The said letter is at Exhibit P.W.1/A. P.W.1 Reshma has also stated that accused no. 1 used to physically assault her by giving her kicks. This was brought out as an omission qua her report at Exhibit P.W.1/B. According to P.W.1 Reshma, in the last week of June 1995 the accused had taken her to Vrundavan Hospital at Mapusa and had pressurized her to sign on the consent form. According to her, she was again taken to the said hospital on 28th June 1995, where the abortion was performed. According to her, the accused no. 1 had sent a letter to her sister Sushma asking her to come and take away P.W.1. According to her, on 2nd July 1995, her parents came to the matrimonial home at Torsem where the accused asked the parents to take away P.W.1 Reshma. Despite efforts at convincing the accused, the accused had not relented and, therefore, the parents had to take away P.W.1 Reshma. In this background, the report dated 15th September 1995 at Exhibit P.W.1/B came to be filed by her.

6. Apart from the omission in respect of kicks being delivered by accused no. 1, P.W.1 Reshma admitted in the cross-examination that she had not told her mother, father or sister that she had been assaulted by accused no. 1. She also admitted that she had not told them that she was harassed in order to get a refrigerator. According to her, on the day of registration of marriage, her father had informed the accused that he was not in a position to give

them a refrigerator. She also admitted in the cross-examination that after 2nd July 1995 no attempts had been made to bring about a reconciliation between her and accused no. 1. The letter at Exhibit P.W.1/A reads as under:-

> "Suvarna, I like to tell you that, tell your father that I do not want clothes, fan, cot, sewing machine, instead give me 165 ml. Kelvinator or Godrej fridge, only if they have a wish. I am not telling that he should give me. There is no compulsion. Stand and a stabilizer are available with the fridge. Raguvir."

7. A plain reading of Exhibit P.W.1/A suggests that this was only a request made by the accused no. 1 for giving him a 165 litres refrigerator instead of the other articles mentioned in the said letter. This letter is couched in an extremely polite language and can by no stretch of imagination be understood as if the accused no. 1 was demanding the refrigerator. P.W.1 complains that her in-laws were finding fault with what she was doing. This is the harassment that she complains of. She also admitted that she had not informed her mother, father or sister regarding the physical beating by accused no. 1.

8. P.W.2, the sister of P.W.1, Sushma Parab, states that she came to know that accused nos. 3 and 4 were ill-treating P.W.1. P.W.2 Sushma Parab further states that the respondent no. 1 had sent a letter to her through one Vilashini Naik asking her to take away P.W.1 Reshma. That

letter is at Exhibit P.W.2/A.

9. P.W.5 Dnyander Parab, father of P.W.1 Reshma, states that the accused was not satisfied with the various items gifted at the marriage but was insisting for a fan and refrigerator on the basis of the letter written by respondent no. 1, which is at Exhibit P.W.1/A. P.W.5 Dnyander only states that the accused persons were not treating P.W.1 well but were troubling her. He complains that the accused were not allowing P.W.5 Dnyander to talk freely with P.W.1 whenever he visited her house. He further states that he received a letter at Exhibit P.W.5/A from respondent no. 1 complaining that P.W.1 could not cook or wash clothes or light a stove. According to him, on 2nd July 1997 he alongwith P.W.2, P.W.3 and P.W.4 had gone to the house of the accused and had brought P.W.1 back with them. He also states that the accused had allowed P.W.1 Reshma to carry her clothes and her ornaments in a suitcase and when P.W.1 Reshma had gone to touch the feet of respondent no. 1, respondent no. 1 had kicked her.

10. Similar is the evidence of P.W.6 Satyawati Parab, mother of P.W.1 Reshma. P.W.6 Satyawati has stated that her daughter had informed her about the harassment but does not state what the harassment was. In the cross-examination she does make a reference that P.W.1 had told her that original accused no. 3 (who had expired during the trial) had asked

her (P.W..1) to get various items from her parents' house.

11. As to what happened on 2nd July 1997 when P.W.5 Dnyander and P.W.6 Satyawati had brought back their daughter Reshma is corroborated by P.W.3 Ganesh Parab, P.W.4 Jaganath Gorkhankar, P.W.8 Shivram Parab and P.W.9 Jandharan Kaskar.

12. Relying on the evidence of these witnesses and the three letters at Exhibits P.W.1/A, P.W.2/A and P.W.5/A, it is urged by Mr. Lawande, the learned Public Prosecutor for the appellant State that an offence punishable under Section 498A is clearly made out against respondent no. 1. According to the learned Public Prosecutor, it is clear that the respondent no. 1, by virtue of the letter at Exhibit P.W.1/A, had requested that a 165 litres refrigerator be gifted to him instead of the other articles. According to the learned Public Prosecutor, P.W.1 Reshma was subsequently ill-treated because her parents could not fulfil the desire of the respondent no. 1 to be presented with a refrigerator.

13. The letter at Exhibit P.W.1/A alleged to have been written by respondent no. 1 is certainly a letter requesting P.W.1 Reshma to ask her parents to present the respondent no. 1 with a refrigerator instead of the other articles. According to P.W.1 Reshma, her father P.W..5 Dnyander had informed the accused no. 1 at the time of the

registration of the marriage that P.W.5 was not in a position to present the refrigerator. The bald assertion of P.W.1. Reshma that she was harassed on account of the inability of her parents to present a refrigerator cannot be accepted. According to her, the alleged harassment was that the accused were finding fault with whatever she was doing. Though in her substantive evidence she does make a reference to the fact that the accused no. 1 had kicked her four or five times, this statement has been brought out as an omission qua her report at Exhibit P.W.1/B. P.W.1 Reshma does not depose to a systematic conduct of harassment on the part of the respondents on account of the failure of her parents to fulfil the alleged demand of a refrigerator. In fact, there is no demand for presenting a refrigerator to the respondent no. 1. The legal evidence in support of harassment is wanting in the present case. As rightly submitted by Mr. Bhobe, the learned counsel appointed for the respondents, that the letter at Exhibit P.W.5/A clearly explains as to why the accused were finding fault with whatever was being done by P.W.1 Reshma. The letter in terms refers that P.W.1 Reshma was not knowing how to cook, wash clothes or light a stove. The said letter further requests the parents of P.W.1 Reshma to take her back for a few days so that she could be taught how to cook food etc.. The letter also makes a reference that the parents may keep P.W.1 Reshma for one month in order to teach her those things.

14. It was, thus apparent that the accused were finding fault with P.W.1 Reshma because she was unable to cook food, wash clothes, light a stove etc.. The report of P.W.11 Dr. Maria Pereira shows that P.W.1 Reshma had slightly below average I.Q. and adjustment problems. Thus, P.W.1 Reshma was castigated by the accused on account of her inability to perform the daily household chores rather than for failure of gifting a refrigerator. The evidence in respect of an offence under Section 498A falls woefully short of proving the offence beyond reasonable doubt against the respondents. The learned appellate Court, therefore, according to me, was perfectly justified in acquitting the respondents.

15. In respect of an offence under Section 312 of the Indian Penal Code, it has been argued by the learned counsel appearing for the respondents that there is no evidence that the abortion was performed forcibly and against the wish of P.W.1 Reshma. The evidence of P.W.10 Dr. Ratan Naik clearly establishes that the medical termination of pregnancy was done with the consent of P.W.1 Reshma. The statement of P.W.1 Reshma after nearly three months of the abortion that she was pressurized in signing the form, according to the learned counsel for the respondents, is actuated out of a desire to wreak vengeance against the accused. The F.I.R. in this case came to be filed on 15th September 1995. Admittedly P.W.1 Reshma left the house of

the accused on 2nd July 1995. There is no explanation forthcoming from the prosecution as to why the report was lodged after nearly two and a half months from the time P.W.1 Reshma left the house of her husband. In such circumstances, the belated statement of P.W.1 Reshma, which is belied by the evidence of P.W.10 Dr. Ratan Naik that she was pressurized in signing the consent form, according to me, cannot be relied upon to convict the respondent no. 1 for an offence under Section 312 of the Indian Penal Code.

16. After giving my anxious consideration to the submissions advanced by Mr. Lawande, the learned Public Prosecutor for the appellant State, I find that there is no perversity in the reasoning of the learned lower appellate Court in acquitting the respondent no. 1 for offences punishable under Sections 498A and 312 of the Indian Penal Code and in acquitting respondent no. 2 for an offence punishable under Section 498A of the Indian Penal Code. There is, thus, no merit in the present appeal and the same deserves to be dismissed.

17. In the result, therefore, Criminal Appeal is dismissed. Bail bonds of the respondents stand cancelled.

(P.V. HARDAS)
JUDGE.

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